

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

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|------------------------------------|---|------------------|
| Fouad Marzouca, |) | CIVIL ACTION NO. |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| GFG Realty Fund, LLC, Frederick D. |) | |
| Gibbs, Banc Capital & Financial |) | |
| Services, Inc, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL OF A CIVIL ACTION

The United States would respectfully show the following:

1. The United States received notice of a recently filed civil action pending in the Court of Common Pleas for Spartanburg County, South Carolina, entitled Fouad Marzouca, vs. GFG Realty Fund, LLC, Frederick D. Gibbs, Banc Capital & Financial, et al., State Civil Action Number 2011-CP-42-5112 (hereafter, the “state case”). The state case seeks, among other things, to determine the respective interests of certain parties to a parcel of real property (the “Real Property”) which is the subject of federal criminal forfeiture proceedings, as set forth below (¶ 3). The real property is generally described and identified as 269 S. Church St. and Church St., Spartanburg, SC (Tax Map Nos.: 7-12-14-351.00 and 7-12-14-368.00).

2. Although the United States has not yet been formally served with the foreclosure papers related to the state case, Mr. Ingalls’ office provided the government with a courtesy copy of the papers on December 1, 2011. The United States has attached as Exhibit A a copy of papers in its possession related to the state case.

3. The grounds for removal of the state case to the United States District Court are as follows. The Real Property which is the subject of the state case is also the subject of criminal forfeiture proceedings in the case of United States v. Frederick D. Gibbs, et al., Cr. No. 7:11-2195, currently pending in the United States District Court, Spartanburg Division. See, Paragraph 2(A) of the Forfeiture Allegation of the Indictment (Entry 34).

21 U.S.C. § 853(k) provides that the federal court is the exclusive venue for determining the rights of third parties in property which is subject to criminal forfeiture proceedings.¹ 21 U.S.C. § 853(k) states, in pertinent part:

(k) Bar on intervention

Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may –

(1) intervene in a trial of appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

In this case, the Indictment was filed on October 14, 2011. The state case was filed November 21, 2011. Accordingly, the state action is barred by Section 853(k).

The United States District Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1444 and 2410, 21 U.S.C. § 853, and Rule 32.2 of the Federal Rules of Criminal Procedure.

4. Removal of the state case is authorized by 28 U.S.C. § 1441(a).

¹Such third-party rights are determined in federal criminal ancillary proceedings, as provided for under Section 853(n) and Rule 32.2, Fed. R. Crim. P.

WHEREFORE, the entire action described in Paragraph 1 is properly removed from the state court to the United States District Court, pursuant to 28 U.S.C. § 1441, et seq.

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January 5, 2012

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Pursuant to 28 U.S.C. §1446(d), the Clerk of the Court of Common Pleas, Spartanburg County, South Carolina, is being provided a copy of this Notice of Removal.

s/ Stanley D. Ragsdale
STANLEY D. RAGSDALE
Assistant United States Attorney

January 5, 2012